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25 June 2013

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UNITED NATIONS	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-09-92-T
		Date:	25 June 2013
		Original:	English

IN TRIAL CHAMBER I

Before: **Judge Alphons Orie, Presiding**
Judge Bakone Justice Moloto
Judge Christoph Flügge

Registrar: **Mr John Hocking**

Decision of: **25 June 2013**

PROSECUTOR

v.

RATKO MLADIĆ

PUBLIC

DECISION ON PROSECUTION MOTION TO TENDER P988 MFI INTO EVIDENCE, AND TO AMEND ITS 65 *TER* EXHIBIT LIST

Office of the Prosecutor
Mr Dermot Groome
Mr Peter McCloskey

Counsel for Ratko Mladić
Mr Branko Lukić
Mr Miodrag Stojanović

I. PROCEDURAL HISTORY

1. On 19 February 2013, the Chamber, in the course of the hearing of Witness RM-013, marked exhibit P988 ("P988"), a document tendered through this witness by the Prosecution, for identification.[1] The Defence objected to the admission of P988 due to its unclear origin, and the Chamber instructed the Prosecution to clarify the source of this document.[2] On 27 February, the Prosecution informed the Chamber that they were awaiting response from the State Court of Bosnia and Herzegovina on the provenance of P988.[3] The Prosecution, on 22 March 2013, informed the Chamber through an informal communication that the State Court of Bosnia and Herzegovina had given notice that it is not in possession of the original of P988 but provided another copy of the original of P988 as well as other documents in BCS. The Prosecution further informed the Chamber that it requested translations of the relevant documents with a tentative completion date for translation by 26 March 2013. By means of informal communication of 28 March 2013, the Prosecution informed the Chamber that it would file a written submission seeking admission of P988 in the week of 5 April 2013.

2. On 23 April 2013, the Prosecution filed a motion ("Motion") to admit a new version of P988 into evidence, to add another document bearing Rule 65 *ter* of the Tribunal's Rules of Procedure and Evidence ("Rules") No. 28785 to the Prosecution's Rule 65 *ter* exhibit list ("Rule 65 *ter* exhibit list") and to tender this document from the bar table.[4] The Defence did not file a response.

II. SUBMISSIONS OF THE PARTIES

3. P988 is a copy of a list of 55 detained persons to be released from KP Dom Foča on 29 August 1992. The Prosecution submits that it was provided this document by the Bosnian State Prosecutor's office in 2009 and that according to the Bosnian Prosecution the original of P988 remains with the Defence team in the Bosnian trial against Mitar Rašević.[5] The Prosecution further submits that it received a more complete copy of the original of P988, bearing Rule 65 *ter* No. 14074a ("Complete List I") from the Court of Bosnia and Herzegovina on 4 March 2013 and that it disclosed this document to the Defence on 12 April 2013.[6] Complete List I contains an additional

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1 T. 8910.
2 T. 8909-8911.
3 T. 9293.
4 Prosecution Motion to Tender P988 MFI into Evidence, and to Amend its 65 *ter* Exhibit List, 23 April 2013.
5 Motion, para. 3.
6 Motion, para. 3.

typed line stating "Commander TG Foča" at the bottom of the page.[7] The Prosecution seeks leave to replace P988 and tender the more complete copy through Witness RM-013.[8] In addition, the Prosecution submits that during its research regarding the provenance of P988 it discovered the document bearing Rule 65 *ter* No. 28785 ("List II").[9] This document is entitled "List of detained persons, Muslims, released from the Foča KPD, 30 August 1991" and includes the names of 35 of the Muslim detainees also listed in P988, respectively Complete List I.[10] The list is signed by the Foča Tactical Group Command, "M. Kovač".[11] The Prosecution further submits that the indicated year 1991 is a typographical error and should be 1992, as Muslims were not routinely detained in KP Dom, Foča until April 1992.[12] The Prosecution annotates that the original of List II was also a Defence exhibit in the Bosnian trial against Mitar Rašević, that the Court of Bosnia is only in possession of a copy of that list, and that this list was originally obtained by the Prosecution from the Court of Bosnia in 2009.[13] List II was disclosed to the Defence on 8 June 2012.[14]

4. The Prosecution submits that both, Complete List I and List II, are relevant to and probative of the charges in the instant case, relating to scheduled incident B.5.1 of the Indictment.[15] The Prosecution, conceding that it does not have good reason for the late addition of List II to the Rule 65 *ter* exhibit list, avers that such addition will not prejudice the Defence as the list consists of one page of names.[16] Moreover, the Prosecution claims that in any event, the probative value of the list is so great that it outweighs any prejudice which may result from this document's addition.[17]

III. APPLICABLE LAW

5. The Chamber recalls and refers to the applicable law governing amendments to the Rule 65 *ter* exhibit list as set out in a previous decision.[18]

6. Rule 89 of the Rules provides in its relevant part:

> (C) A Chamber may admit any relevant evidence which it deems to have probative value.

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7 Motion, para. 4.
8 Motion, paras 1, 4.
9 Motion, para. 5.
10 Motion, para. 5.
11 Motion, para. 5.
12 Motion, para. 5.
13 Motion, para. 5.
14 Motion, para. 5.
15 Motion, paras 8-10.
16 Motion, paras 11-12.
17 Motion, para. 12.
18 Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, paras 5-6.

IV. DISCUSSION

(a) Preliminary issue

7. As a preliminary issue, the Chamber points out that the requested replacement of P988 by Complete List I and its tendering into evidence do not constitute substantially different legal actions as compared to the addition of complete new documents to the Rule 65 *ter* exhibit list and their tendering. Hence, both the requested replacement of P988 and the addition of List II should be subject to the principles as set out in the Applicable law section, above.

(b) Amendments to the Rule 65 *ter* exhibit list

8. With regard to the replacement of P988, the Chamber notes that the Prosecution has shown good cause for its replacement, as it only received Complete List I on 4 March 2013. The Chamber considers that the Prosecution has failed to show good cause for the addition of List II to the Rule 65 *ter* exhibit list at this stage of the proceedings as the Prosecution's only reasoning is to have discovered the document in its archives late.[19]

9. The Chamber observes that the Defence does not contest the *prima facie* relevance and probative value of Complete List I and List II. The Chamber further notes that the Defence did not object to the Prosecution's assumption that the date reflected on List II should be read as 30 August 1992. Having reviewed the mentioned documents and noting that they relate to scheduled incident B.5.1 of the Indictment, the Chamber finds them *prima facie* to be relevant and of probative value.

10. The Chamber notes that Complete List I only contains one additional typed line compared to current P988 and that List II is two pages consisting of names. The Chamber considers that the addition of these documents to the Rule 65 *ter* exhibit list will not unduly burden the Defence in the preparation of its case. Considering the above, the Chamber is satisfied that it is in the interests of justice to grant the documents' addition to the Rule 65 *ter* exhibit list.

(c) Admissibility pursuant to Rule 89 (C) of the Rules

11. Referring to its above findings with regard to relevance and probative value, the Chamber considers Complete List I and List II to comply with the requirements of Rule 89 (C) of the Rules and therefore to be admissible.

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[19] Decision on Prosecution Second Motion to Amend Rule 65 *ter* Exhibit List, 27 June 2012, para. 6.

(d) Confidentiality

12. The Chamber notes that the Prosecution originally tendered P988 as a public exhibit through Witness RM-013.[20] The Chamber further observes that the Court of Bosnia and Herzegovina in the letter of 4 March 2013 requested to keep Complete List I and List II confidential.[21] However, in its submissions the Prosecution has not indicated that the documents should be admitted under seal. Out of an abundance of caution, the Chamber allows the Prosecution one week to indicate whether this is needed.

V. DISPOSITION

13. For the foregoing reasons, pursuant to Articles 20 (1) and 21 (4) of the Statute of the Tribunal and Rules 65 *ter* (E) (iii) and 89 (C) of the Rules, the Chamber

GRANTS the Motion;

GRANTS the replacement of P988 by Complete List I, bearing Rule 65 *ter* No. 14074a;

GRANTS the addition of List II, bearing Rule 65 *ter* No. 28785, to the Rule 65 *ter* exhibit list;

ADMITS into evidence

a) Complete List I, bearing Rule 65 *ter* No. 14074a, as the new P988;

b) List II, bearing Rule 65 *ter* No. 28785

REQUESTS the Prosecution to clarify within one week of the filing of this decision if the documents should be admitted under seal; and

[20] T. 8908-8910.
[21] Annex B to Prosecution Motion, Letter from Court of Bosnia and Herzegovina, dated 4 March 2013.

REQUESTS the Registry to assign an exhibit number to List II, bearing Rule 65 *ter* No. 28785 and inform the parties and the Chamber of the number so assigned.

Done in English and in French, the English version being authoritative.

Judge Alphons Orie
Presiding Judge

Dated this twenty-fifth day of June 2013
At The Hague
The Netherlands

[Seal of the Tribunal]